

11-1800-7689-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Nori Snyder of the Denial of Her
Application for a Family Day Care License

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

The above-entitled matter came on for hearing before
Administrative Law Judge Barbara L. Neilson on June 3, June 18,
and August 25, 1993, in the office of the Dakota County Attorney
in Hastings, Minnesota. The record closed on February 28, 1994.

Robert A. Hill, Attorney at Law, Parsinen, Bowman & Levy, 100
South Fifth Street, Suite 1100, Minneapolis, Minnesota 55402,
appeared on behalf of the Applicant, Nori Snyder, 1859 Turquoise
Trail, Eagan, Minnesota 55122. Margaret M. Horsch, Assistant
County Attorney, Dakota County Judicial Center, 1560 West Highway
55, Hastings, Minnesota 55033-2392, appeared on behalf of Dakota
County Human Services ("the Local Agency") and the Minnesota
Department of Human Services ("the Department").

This Report is a recommendation, not a final decision.
The Commissioner of Human Services will make the final decision
after a review of the record which may adopt, reject or modify
the Findings of Fact, Conclusions, and Recommendations contained
herein. Pursuant to Minn. Stat. 14.61, the final decision of
the Commissioner shall not be made until this Report has been
made available to the parties to the proceeding for at least ten
days. An opportunity must be afforded to each party adversely
affected by this Report to file exceptions and present argument
to the Commissioner. Parties should contact Maria R. Gomez,
Commissioner, Minnesota Department of Human Services, 444
Lafayette Road, St. Paul, Minnesota 55155-3815, to ascertain the
procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether the Applicant has fully
complied with the provisions of the family day care licensing
statute and rules and whether the application should be approved
and a license granted.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Background

1. The Applicant resides at 1859 Turquoise Trail in Eagan, Minnesota. She is married and has four children: Alicia, born [redacted]; Ashley, who was born [redacted]; Samantha, who was born on [redacted]; and Jessica, who was born on [redacted]. (T. 780, [redacted]).

2. Ms. Snyder applied for a family day care license in June of 1989. As part of the licensure process, Ms. Snyder provided background check forms for herself and her husband, Sam Snyder. A background study revealed criminal history information regarding Mr. Snyder which the Local Agency determined were potential disqualifiers under Minn. Rules pt. 9502.0335, subp. 6A. These matters included the following: A driving under the influence charge incurred on August 18, 1989, which was later reduced to careless driving; a May 23, 1985, charge of hit and run with property damage, which had no disposition; a June 20, 1984, charge of battery on person, which was rejected when the victim was unavailable; a March 22, 1984, charge of possession of a controlled substance, which was not prosecuted based on insufficient evidence; and a January 7, 1983, charge of possession of a controlled substance, which had no final disposition. (T. 145-47, 512, 520-[redacted], 781-83; Dakota County Exs. 3, 25.)

3. Ms. Snyder was licensed on February 2, 1990, as a Class A Family Day Care Provider. (T. 153.)

4. Based upon Mr. Snyder's background check results, Loren K. Bach, Dakota County Child Care Licensing Social Worker, requested that Mr. Snyder attend an evaluation for chemical dependency or alcohol use. Mr. Snyder, in fact, attended such an evaluation at the Dakota Valley Treatment Center. The evaluator concluded that there was no apparent problem with alcohol use, but felt that Mr. Snyder's apparent potential for threatening behavior should be further assessed. (T. 147-149, 512; Dakota County Ex. 3.)

5. The Local Agency recommended that on March 5, 1990, that Ms. Snyder be granted a day care license with the following provisions:

1. That the license be probationary for one (1) year and that the licensee will comply with all sections of Minnesota Rules, parts 9502.0300 to 9502.0445, at all times.
2. That Samuel Snyder not be used as a substitute care giver.
3. That upon initial relicensing and every year thereafter, Samuel Snyder's criminal history check would include a driver's record check.

4. There will be no drug, alcohol or violence related offenses or contact with law enforcement. (T. 150; Dakota County Ex. 3.)

6. The Department of Human Services granted the Local Agency's request for a variance to a disqualifier to the licensing rule. The approval by the Department was "based upon the fact that Mr. Snyder completed two chemical dependency evaluations which did not indicate current problems with alcohol or other drugs." The variance, which was to be in effect from March 5, 1990, to March 1, 1991, was "approved with the stipulation that Mr. Snyder may not be used as a substitute caregiver and that there be no other drug, alcohol or violence related offenses or any other contact with law enforcement." (T. 152; Dakota County Ex. 4.)

7. Based upon the recommendation of the Local Agency dated November 14, 1991, the Department of Human Services placed Ms. Snyder's license to provide family day care on probationary status for a period of one year. Ms. Snyder was notified of the probationary action in a letter dated December 17, 1991. The letter set forth the following reasons for the probationary action:

- a. Ms. Snyder's failure to report to the Local Agency an injury to a one-year-old child who sustained a fractured tibia in September of 1991;
- b. Exceeding age distribution requirements on October 2, 1990, December 1990, and "[a]fter December 1990";
- c. Failing to maintain admissions and arrangement forms for three children in her care and failing to keep accurate enrollment records;
- d. Use of adult substitutes without submitting criminal history checks;
- e. Use of teenage substitutes after 5:30 p.m.;
- f. Failure to use gates on stairways;
- g. Use of a rigid-sided playpen that appeared to have mold on the outside plastic surfaces for a six-month-old infant to nap in;
- h. Use of a van with no seat belts on the back bench to transport children.

The December 17, 1991, letter to Ms. Snyder indicated that she would be permitted to continue to operate with the probationary license under the following conditions:

1. You follow and comply with all parts of Minnesota Rules, Parts 9502.0300 to 9502.0445.

2. No variances will be granted during the probationary period.
3. You come into compliance with the age distribution restrictions for your specific license classification. [C-2].
4. You submit enrollment and attendance records to Dakota County on a monthly basis.
5. New enrollments must be approved in advance by Dakota County.
6. You have and use age appropriate equipment such as gates, seat belts, car seats, cribs and any other items required by Minnesota Rules, Parts, [sic] 9502.0300 to 9502.0445.
7. You complete the five hours of training required from your previous relicensing, as well as two additional hours in the care of infants and toddlers.
8. Dakota County will monitor your compliance with these terms and with all of Minnesota Rules, Parts 9502.0300 to 9502.0445, by making unannounced visits to your home.

Ms. Snyder was notified that any failure to comply with these conditions or with any other provisions of applicable Minnesota Rules and Laws could result in revocation of her license. She was further notified that she had the right to request the Commissioner of Human Services to reconsider a probationary order by sending a written request for reconsideration by certified mail within ten calendar days after she received the Notice of Probationary Action. (T. 150-52; Dakota County Ex. 9.)

8. During Ms. Bach's relicensing visit on January 8, 1992, Ms. Bach informed Ms. Snyder that she needed release of information forms for Mr. Snyder and for Ms. Snyder's parents as soon as possible to complete her relicensing. Ms. Bach gave Ms. Snyder a Correction Order referencing the need to return the releases as soon as possible. (T. 219; Dakota County Ex. 12.)

9. Ms. Bach sent a "speedy memo" to Ms. Snyder on January 24, 1992, again requesting that Ms. Snyder send the releases as well as the Executed Correction Order. Ms. Bach indicated that she would request an extension from the Department of Human Services in order that Ms. Snyder's day care license would not lapse. (T. 221, 222; Dakota County Ex. 13.)

10. Ms. Bach submitted a License Extension Request to the Department of Human Services dated January 27, 1992, in which she indicated that the request was made because the program was appealing an order of probation. The Department denied the request for extension, indicating that the Department "cannot grant an extension for a provider to complete correction order items, and it is not necessary to extend a license when a provider is requesting reconsideration of probation." The

Department indicated that it could grant extensions "only for an appeal of a revocation or suspension, for an investigation of a Rule 11 disqualifier, or for an investigation of a complaint." (T. 225-26; Dakota County Ex. 15.)

11. Ms. Bach sent Ms. Snyder a speedy memo on February 20, 1992, in which she advised Ms. Snyder that the Department had not granted the extension and that Ms. Snyder's license lapsed on February 1, 1992. Ms. Bach further stated that she needed to hear from Ms. Snyder immediately regarding the items on the Correction Order in order to complete the licensing process. (T. 226; Dakota County Ex. 16.)

12. After receiving the notice that she had been placed on probation, Ms. Snyder hired an attorney, David Albright, to represent her in connection with her day care licensure. Ms. Snyder instructed Mr. Albright to appeal the probationary action. Mr. Albright submitted a letter to the Department of Human Services questioning some of the rule violations contained in the Department's letter of probation. The letter to the Department indicated, however, that "[w]e do not disagree that a one-year probation is inappropriate or its terms." Ms. Snyder did not receive a copy of Mr. Albright's letter to the Department and was unaware until that the Department did not believe that she had appealed the probationary action. (T. 211, 724, 916.)

13. Ms. Bach told Ms. Snyder that on March 3, 1992, she was on probation, and indicated that, if Ms. Snyder was concerned about that fact, she should get copies of all correspondence between the Department and Mr. Albright. Ms. Bach informed Ms. Snyder that she must comply with the terms of the probation. Ms. Snyder did not contact the Department further with respect to the probationary action. (T. 724, 725.)

14. In a letter dated July 2, 1992, Ms. Bach recommended that the Department of Human Services deny Ms. Snyder's application for family day care licensure for 1992-93 "due to lack of required training, failure to provide criminal history releases on a member of the family and two documented periods of being over capacity, lack of supervision and no use of dates." On September 10, 1992, Ms. Bach sent an addendum to her letter of July 2, 1992, to the Department. The letter indicated that "[c]riminal history information has been obtained on Sam Snyder. Another documented incident of being over capacity in the under 30 month age group has been determined, gates are still not being used, and concerns regarding cleanliness have been addressed. Nori was found to have two families in care on an unannounced visit on August 26, 1992, which does not conform with statutory requirements for legal unlicensed care." Dakota County continued to request that Ms. Snyder's application for licensure be denied. (Dakota County Ex. 22.)

15. In a letter dated November 30, 1992, the Department denied Ms. Snyder's application to provide family day care. In the letter, the Department indicated that Ms. Snyder had violated age distribution restrictions during a June 1992 child protection

investigation, a drop-in visit on June 30, 1992, and a child protection investigation on August 26, 1992; failed to inform Dakota County of the enrollment of one child in violation of the terms of her probation; violated the variance to the disqualifier with respect to the condition that there be no further drug, alcohol, or violence related offenses with respect to Sam Snyder; failed to be aware that a child had been bitten by another, raising "a concern regarding [her] supervision of the day care children"; failed to use a gate during a drop-in visit on June 30, 1992; and lacked five hours of required training for the 1990-91 year as well as two hours of extra training required under the terms of probation issued to her in December of 1991. The Department also indicated that "[o]ther issued included in the probationary letter of December 1991, as well as this letter, include, [sic] operating outside of your age distribution restrictions in the infants/toddler age group, and lack of a gate or barrier on the steps, whenever children between 6 and 18 months were present." (Dakota County Ex. 23.)

16. Ms. Snyder filed a timely appeal of the Department's denial of her license application.

17. Ms. Snyder had a Class A license from February 2, 1990, to February 2, 1991. She was licensed as a Class C2 day care from February 1, 1991, to October 17, 1991. Effective October 17, 1991, Ms. Snyder was licensed as a Class C1 day care. Ms. Snyder was changed from a Class C2 license to a Class C1 license on October 17, 1991, because she was out of compliance with the age distribution restrictions imposed on C2 providers on that date. (T. 273, 276, 353, 662-65.)

Issues Relating to Samuel Snyder

18. On September 11, 1990, at approximately 6:30 p.m., Lori and Sam Snyder had an argument over the request of one of their daughters to buy a pair of new shoes. Mr. Snyder didn't want to get them for her because he didn't feel she needed them. Eventually, he agreed to take the daughter out to the car to go to the store to buy the shoes. A neighbor of the Snyder's, Shelley Rainmaker, called the Eagan police to report the argument at the Snyder home. The police officers noted in the report prepared in connection with the call that, "The argument was over money which led to Samuel attempting to leave, taking one of their children with him. Samuel decided to stay in the end. They advised that there would not be any further problems." No charges were brought with respect to this incident. Ms. Rainmaker was unhappy with the Snyders at the time because she was no longer being used as a babysitter. This incident occurred during the period in which the variance was in effect. (T. 526-27, 786-87; County Ex. 21.)

19. On March 5, 1991, Mr. Snyder was placed under arrest for driving under the influence of alcohol. The police report prepared with respect to the arrest indicates that, during the officer's contact with Mr. Snyder, "He became more and more aggressive and verbally combative. He began questioning my

ability to determine if someone is under the influence of alcohol. During release, Snyder threatened to assault me 'in or out of court'. This was done in front of his wife." The urine test performed on March 5, 1991, revealed an ethyl alcohol concentration of .13 gms per 67 mm of urine. Court records indicate that, on July 22, 1991, the driving under the influence charge was amended to careless driving and that Mr. Snyder was required to pay a \$336.00 fine. The jail sentence was suspended. He was required to be evaluated for chemical dependency. (Dakota County Ex. 27.)

20. On June 5, 1991, an Eagan police officer followed the Snyders' van to the Snyder's home, believing that Mr. Snyder was driving after his license was revoked. The officer observed a male approximately 35 years old get out on the driver's side of the car and walk into the home. The person appeared to the officer to be Mr. Snyder, with whom he had had contact in the past. When the officer spoke with Mr. Snyder, he said he had just gotten home but stated that his father-in-law was in fact driving the van and that he was a passenger. Mr. Snyder was cited for driving after revocation. The charge was left on Mr. Snyder's record for a year and then was dismissed. (T. 541, 550; Dakota County Ex. 29.)

21. On September 14, 1991, Mr. Snyder was again charged with driving while under the influence of alcohol. The intoxilyzer test administered to Mr. Snyder revealed a 0.11 percent alcohol concentration. Mr. Snyder was charged with driving under the influence of alcohol, driving with a alcohol concentration of 0.10 percent or more, improper lane usage, and driving in violation of a limited license. Mr. Snyder pleaded guilty to driving with an alcohol concentration of 0.10 percent or more, and the other charges were dismissed. He was sentenced to 30 days in jail, of which 15 days were suspended, and required to pay a fine of \$250.00. He was placed on probation for one year. He was also required to undergo a chemical dependency evaluation and follow all recommendations, have no arrests or convictions of driving after revocation, driving after a suspension, or driving without a driver's license or alcohol-related offenses during the period of probation. As part of the plea bargain, it was agreed that there would be no revocation of the prior one-year stay on the June 5, 1991, driving after revocation charge. Effective September 21, 1991, Mr. Snyder's driver's license was revoked for a period of 90 days. (Dakota County Ex. 30.)

22. On November 8, 1992, a St. Peter police officer placed Mr. Snyder under arrest for driving while under the influence of alcohol. The officer's report indicates that, "[w]hile on the way to the police department and at the police department Mr. Snyder became angry and upset towards me." Mr. Snyder did not give an adequate breath sample in two attempts and was regarded by the police officer as having refused the test. It appears that Mr. Snyder was eventually charged with a gross misdemeanor driving while under the influence of alcohol and was sentenced to 365 days in jail with time off for good behavior, 275 of which were stayed. He was ordered to pay a fine of \$500.00, a chemical use assessment of \$130.00 and other charges in the amount of

\$95.00. He was placed on supervised probation for 24 months and was ordered to attend and successfully complete the relapse program. He served 90 days in the Nicollet County Jail beginning January 1, 1993, and was permitted to leave jail in order to work. (Dakota County Ex. 31.)

23. The Local Agency did not receive any complaints regarding Mr. Snyder being drunk or impaired while at the day care residence. (T. 259.) Mr. Snyder is employed as a Security Counselor by the State of Minnesota and is licensed by the State because he works with vulnerable adults. He undergoes criminal background checks as part of his licensure. (T. 504-05, 509-10, 552-53.)

24. After the expiration of the variance in March of 1991, Ms. Snyder used Mr. Snyder to provide substitute care for her on the average of twice per month for short periods of time at the end of her day care day. There is no evidence that Mr. Snyder was used as a substitute during the variance period. (T. 510, 555-56, 891.)

25. Mr. Snyder was a positive influence on day care children when he was present and home. (T. 28, 38-39, 580.)

26. At the time that Ms. Snyder began to submit her Application for Relicensure in early 1992, Mr. and Ms. Snyder were separated. Because they were undergoing counseling and Ms. Snyder believed there was a possibility of reconciliation, Ms. Bach requested that Mr. Snyder complete criminal background releases. (T. 705, .) Because Mr. Snyder was not living in the home and the relationship between the parties was somewhat strained, Ms. Snyder had some difficulty obtaining the completed release forms from Mr. Snyder. Ms. Snyder sent back the release forms relating to Mr. Snyder on approximately four separate occasions in February, April, May and August of 1992. The Local Agency did not, however, receive the releases pertaining to Mr. Snyder until August of 1992. Thus, the Local Agency did not learn of police records pertaining to Mr. Snyder in 1990-92 until after it recommended denial of the Application for Relicensure. (T. 252, 506, 707-9, 866-70, 883.)

27. Mr. and Ms. Snyder divide up their financial obligations. While Ms. Snyder was concerned that she would be forced to go on welfare if she lost her day care license, there is no evidence that Mr. Snyder's alcohol-related offenses and resulting fines caused financial stress to the Snyders. (T. 257, 514-15, 554, 871-73.)

Use of Substitutes

28. During orientation sessions for day care providers, Local Agency representatives generally discuss the requirement that adults be used as substitutes if the day care provider is not present and the need to obtain releases in order to conduct background checks regarding substitutes. In addition, the Local Agency addresses the need to conduct background checks on

teen-age helpers. (T. 141, 198.) Ms. Snyder does not recall any discussion of the need to discuss release forms for substitutes at the orientation session she attended in 1989. (T. 912.)

29. Ms. Snyder told Ms. Bach during the time she was licensed as a day care provider that she sometimes used her parents and a neighbor, Sally Pieper, as adult substitutes, and that she occasionally used two teen-age helpers, Cinnamon Mattson and Shelly Rainmaker. (T. 199.) Prior to January of 1992, Sally Pieper substituted for Ms. Snyder approximately six times a month for approximately 1 1/2 to 2 hours at a time. She watched the day care children when Ms. Snyder had to transport children to preschool or a doctor's appointment or needed to go get a prescription or attend a Tupperware meeting. She also substituted on occasion in the evening when Ms. Snyder picked up her husband and once in awhile in the morning. Between June of 1992 and June of 1993, it was "very rare" for Ms. Pieper to substitute for Ms. Snyder. (T. 295-96, 305-06, 314, 577.)

30. Ms. Snyder informed Ms. Bach during the course of her reapplication for a license in February of 1992 that she no longer used Ms. Pieper as a substitute. A background check release form was never submitted by Ms. Snyder for Ms. Pieper. (T. 250, 308, 746-47, 913-14.)

31. Prior to the implementation of the probationary action, Ms. Snyder acknowledged to Ms. Bach that she used teen-age substitutes after 5:30 p.m. In particular, Cinnamon Mattson at times was left alone in charge of the day care children. Both Cinnamon Mattson and Shelly Rainmaker were used as helpers when Ms. Snyder was present in the day care home. Sometimes they were hired to babysit Ms. Snyder's own children while she supervised the day care children. (T. 56-57, 70-72, 88, 692; Dakota County Ex. 9.) In October of 1991, Ms. Snyder told Ms. Bach that Shelly Rainmaker was no longer being used as a helper. Ms. Bach gave her a release form for Cinnamon Mattson and indicated that she should fill it out if Cinnamon was being used as a helper. Because Cinnamon was no longer being used as a helper, Ms. Snyder did not return the form. (T. 844-45.)

32. There is no specific evidence that either Cinnamon Mattson or Shelly Rainmaker were used as helpers or as substitutes after October of 1991.

33. On occasion, Cinnamon Mattson would babysit Ms. Snyder's children and the children of a friend at Ms. Snyder's home while the parents went bowling. Ms. Snyder discontinued this practice when Ms. Bach informed her that the County viewed it as improper. (T. 845.)

34. Ms. Snyder does not recall that Ms. Bach discussed the need to submit release forms for substitutes at her first licensing visit. (T. 912.)

35. Ms. Snyder sent the release forms to her parents in Las Vegas. Ms. Bach received the release forms relating to Ms. Snyder's parents on approximately March 20, 1992. (T. 231.)

They signed the forms and sent them back to her, and she mailed in the forms in approximately March of 1992. Ms. Bach sent Ms. Snyder a Memorandum dated May 26, 1992, in which she acknowledged receipt of the release forms relating to Ms. Snyder's parents. (T. 708, 865; Dakota County Ex. 18.) In the May 26, 1992, Memorandum, Ms. Bach reminded Ms. Snyder that she was still waiting for the release forms relating to Mr. Snyder as well as documentation of the four hours of training completed for the 1991-92 licensing year and the five hours needed for the 1990-91 licensing year. Ms. Bach indicated that, "[a]t this time you are still unlicensed since these have not been received. Please respond as soon as possible to complete these items since I will be initiating an non-renewal negative action if I do not receive these." (Dakota County Ex. 18.)

Safety Issues

36. Joshua Shelton (age 5) and Nicole Shelton (age 1 1/2) were enrolled in the Snyder day care in June of 1991 for two days. Joshua Shelton told his mother, Karen Shelton, that he was not using a seat belt when he rode with Ms. Snyder to pick up some Tupperware and go to McDonalds. Joshua indicated that none of the other children were using seat belts or car seats on that occasion either, with the exception of Nicole and another baby who were in car seats. Karen Shelton contacted the police concerning this incident. (T. 323-25.)

37. An Eagan police officer spoke with Ms. Shelton and Ms. Snyder regarding the seat belt incident. In his report, he noted that Ms. Snyder "stated the five yr. old was not belted in because [sic] there were not enough belts in the van." (Dakota County Ex. 24.)

38. Ms. Snyder called Ms. Bach on June 6, 1991, to discuss the police contact of June 5, 1991. Ms. Bach conducted a drop-in visit to Ms. Snyder's day care residence to discuss the seat belt issue on June 12, 1992. Ms. Snyder told Ms. Bach that she was driving an older two-tone brown van which was an RV-style van and did not have a sufficient number of seat belts for all of the children enrolled. Ms. Bach told Ms. Snyder that the rules were clear that children of any age must be in seat belts and children under the age of four must be in car seats that are belted in and informed Ms. Snyder she should not use a van that did not have a sufficient number of seat belts. Ms. Snyder said that she was going to be getting a Dodge Caravan and would ensure that the children were belted in. Ms. Bach viewed the van during her drop-in visit and noted that there were no seat belts visible other than the front passenger side. Ms. Snyder told Ms. Bach that there were two other seat belts in the van and that the back bench was the only one that lacked seat belts. (T. 195-96, 203, 696-97, 698.)

39. Ms. Snyder did not receive any citations regarding the seat belt incident and Ms. Bach did not recommend the initiation of a neglect investigation. (T. 701.)

40. Ms. Snyder later used the RV van again to transport day

care children to preschool. At that time, Mr. Snyder was using the Dodge Caravan. (T. 702.)

41. During orientation sessions for day care providers, the Local Agency generally discusses the need to use gates at both the top and bottom of stairs whenever there is a child in care who is between the ages of 6 and 18 months. (T. 141.)

42. The Snyder's day care home has six stairs leading from the entry level with the playroom to the living room/kitchen level and six stairs leading from the living room/kitchen level to the bedroom level. (T. 476-77.)

43. While Ms. Snyder used gates at times, she failed to use gates on other occasions, particularly during pick-up and drop-off times if she was near the doorway and while the children were sleeping downstairs. Ms. Bach noted the absence of gates during an October 17, 1991, drop-in visit and discussed the issue with Ms. Snyder at that time. Ms. Snyder told Ms. Bach that she had stopped using the gate after Nicolas Diment had learned to crawl down the stairs. During a June 30, 1992, drop-in visit, Ms. Bach again found that no gates were in place. Ms. Snyder told Ms. Bach that, since she was no longer licensed, she did not have to follow Ms. Bach's "stupid rules." (T. 26, 56, 89, 188, 196, 244-45, 301, 312, 326, 475, 603, 605, 647, 649, 726, 778, 857-59, 946.)

44. Following the implementation of the probationary action, Ms. Snyder ensured that Ariel Casey napped in Ms. Snyder's daughter's crib. Ms. Snyder changed the sheets in the bed and alternated their sleeping pattern so they slept at opposite times. If Ms. Snyder's daughter needed to have a nap, her daughter slept in the bassinet shown in Snyder Exs. 14A and 14B, which had screening with very small holes. (T. 850, 854, 915.) There is no evidence that the rigid-sided mesh crib mentioned in the letter of probation or any other mesh-sided crib was used following the institution of probation.

Reporting of Monthly and New Enrollments

45. Although Ms. Bach discussed monthly enrollment with Ms. Snyder, Ms. Snyder did not supply monthly enrollment sheets during the probationary period. (T. 212.)

46. Ms. Snyder did not notify Ms. Bach during the probationary period of Kyle Blackford's enrollment on a temporary basis in her day care. (T. 212, 239.)

Training Requirements

47. During the hearing, Ms. Snyder provided additional training certificates. Based upon those certificates, the Local Agency agreed that Ms. Snyder's 1990-91 and 1991-92 training requirements had been satisfied, with the possible exception of the additional two hours of training required with respect to

infants and toddlers imposed as a part of her probationary action. (T. 464-66, 468, 473.) Later in the hearing, Ms. Bach indicated that she believed the training issue had been "settled" when Ms. Snyder produced the certificates. (T. 722.) The Local Agency did not address the training issue in its Proposed Findings of Fact and Conclusions of Law. It thus appears that the training issue has been withdrawn by the Local Agency.

Supervision and Reporting Issues

48. Gavin Johnson, who was born on October 11, 1990, was enrolled in Ms. Snyder's day care from approximately January 1991 to April 1991. On two occasions when Gavin's father, Richard Johnson, arrived to pick up Gavin, he knocked on the door, no one answered, he found the door unlocked and proceeded into the house to find Gavin strapped into his car seat inside the home. An adult neighbor came in the door right after he arrived. Ms. Snyder was not present in the home on either occasion. The Johnsons generally picked up Gavin at approximately 5:30 p.m., which was the end of Ms. Snyder's day care hours. Mr. Johnson did not see anyone when he pulled up to the home in his car. He usually parked on the street. (T. 17-19, 20-21, 29, 32, 44-45.)

49. On another occasion, Mr. Johnson dropped off Gavin at approximately noon or 1:00 p.m. When he picked Gavin up around 4:30 or 5:00 p.m., his diaper had not been changed and the diaper was full of diarrhea up his back. (T. 48-49.)

50. Nicholas Diment, who was born on August 21, 1990, was enrolled in Ms. Snyder's day care from approximately October or November of 1990 until October of 1991. On September 27, 1991, Nicholas' mother, Tanya Diment, picked up Nicholas at the Snyder day care home. Nicholas was irritable that evening and the following day. The next morning when Tanya Diment tried to change Nicholas' diapers, he screamed when she touched his leg. When she attempted to stand him up, he lifted his leg up. Ms. Diment called Ms. Snyder to ask if anything had happened at day care the previous day and Ms. Snyder told her nothing had happened to Nicholas. Ms. Diment then took Nicholas to the doctor. Nothing showed up on an x-ray taken that day. The doctor informed Ms. Diment that fractures of baby bones would not necessarily show up in an x-ray until the fracture started to heal. Ms. Diment took Nicholas again to the doctor a few days later. Although nothing showed up on the x-ray either, the doctor placed a cast on Nicholas' leg. The Diments then went on vacation. After their vacation ended, they took Nicholas back to the doctor. A fracture showed up on Nicholas' third set of x-rays. The doctor told Ms. Diment that the type of fracture Nicholas had would have resulted from something heavy falling on him or from a fall from a high place. The doctor found no evidence of abuse. (T. 52-55.)

51. Ms. Diment did not believe the injury had occurred in the Diments' home because Nicholas was already irritable when she picked him from day care and he had not fallen recently in their home. (T. 55, 73.)

52. Nicholas had previously fallen down the stairs at the Diments' home in a walker. That injury occurred months before the fracture. The doctor told Ms. Diment that there was no way the fracture could have been related to the walker incident. (T. 73, 87.)

53. Andy Diment, Nicholas' father, asked Ms. Snyder whether she had called and reported the injury. Ms. Snyder told Andy Diment that she had. (T. 61.) In fact, Ms. Snyder had not reported the injury because she did not believe it had occurred in her home. (T. 825.) On October 2, 1991, when Andy Diment found out that Ms. Snyder had not reported the injury, he reported the injury to the Local Agency. (T. 61, 183-84.)

54. Ms. Bach was told that the Local Agency's Child Protection Division would not take on this matter as a child protection issue because it could not be clearly explained where the injury occurred. (T. 185.)

55. Ms. Bach was told by Dr. Schaffhausen, Nicholas' treating physician, that a new healing fracture was confirmed on October 11, 1991, when new bone growth was seen on the x-ray. (T. 736, 737.)

56. At the time of Nicholas' injury, the family had medical insurance coverage through Andrew Diment's employment with TicketMaster. The insurance required a \$100.00 deductible to be satisfied, but everything else was covered. (T. 96-97.)

57. Prior to September 27, 1991, Ms. Snyder and two day care parents, Rebecca Peterson, a Registered Nurse, and Julie Casey, noticed that Nicholas Diment crawled in an unusual way by would not get up on his knees, appeared to be hobbling, and was not bear weight. (T. 482-83, 574-75, 822.)

58. Ms. Snyder never saw Nicholas Diment take any serious fall in a manner which she felt could have resulted in a fracture. (T. 822.)

59. In August of 1992, the Local Agency received a child neglect report concerning one of Ms. Snyder's daughters, Samantha. Richard "Rocky" Amaro, a Social Worker for the Local Agency, investigated the complaint on August 26, 1992. The complainant had alleged that the Snyders had not sought medical care for Samantha's "obviously broken arm." Ms. Snyder explained that Samantha had sustained a slight fracture of the wrist which occurred when she was jumping on the bed and dropped to a sitting position. Ms. Snyder was not in the room when this occurred. Samantha was crying, but there was no way that Ms. Snyder or Mr. Snyder could determine that anything was wrong with her. The Snyders had a babysitter coming over and went out for an hour or so. When they returned, the babysitter informed them that Samantha had continued to cry and complain about her wrist. At that point, the Snyders took Samantha to Urgent Care and a splint was placed on her wrist. The following day, they were referred to an orthopedic specialist who placed a cast on Samantha's

wrist. Samantha wore the cast for approximately two weeks. The incident occurred on July 9, 1992, and Samantha's wrist was placed in a cast on July 10, 1992. Based upon these facts, Mr. Amaro concluded that the allegation of neglect had not been substantiated. (T. 117-20; Dakota County Ex. 2.)

60.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. 14.50 and 245A.08 (1992).

2. The Notice of Hearing is proper in all respects and the Local Agency and the Department have complied with all substantive and procedural requirements of law and rule.

3. Pursuant to Minn. Stat. 245A.08, subd. 3(b) (1992), an applicant for licensure bears the burden of proof at a hearing on the denial of the application to demonstrate by a preponderance of the evidence that he or she has complied fully with Minn. Stat. 245A.01 through 245A.15 and other applicable laws and rules and that the application should be approved and a license granted.

4. Pursuant to Minn. Stat. 245A.07, subd. 3 (b) (1992):

If the license was made probationary, the notice must inform the license holder of the right to request a reconsideration by the commissioner. The request for reconsideration must be made in writing by certified mail within ten calendar days after receiving notice that the license has been made probationary. The license holder may submit with the request for reconsideration written argument or evidence in support of the request for reconsideration. The commissioner's disposition of a request for reconsideration is final and is not subject to appeal under chapter 14.

The Licensee failed to request reconsideration of the Department's probation action within ten days of receipt of the notice. In addition, the Licensee failed to take prompt action to request reconsideration after she discovered that her former attorney had failed to file a timely request for reconsideration. Accordingly, the Licensee's license was on probation between December 17, 1991, and December 17, 1992.

5. Pursuant to Minn. Rules pt. 9543.3030, a background study must be conducted of day care providers; persons over the age of 13 who live in the household where a program is operated; current

employees or contractors who have direct contact with persons being served by the program; and volunteers who provide program services to persons served, under certain circumstances.

6. Pursuant to Minn. Rules pt. 9543.3043, day care providers "must require every individual identified in part 9543.3030 to complete the background information form prescribed by the commissioner." In addition, providers "must submit each completed background study form to the commissioner . . . [b]efore initial licensure and with every license renewal application; and . . . [b]efore a subject first has direct contact with persons served by the provider's program."

7. Minn. Rules pt. 9543.3060, subp. 1, provides, inter alia, that the Commissioner "has reasonable cause to deny a license or to immediately suspend or revoke a license if a provider . . . [f]ails or refuses to cooperate with the Commissioner in conducting background studies as required in parts 9543.3000 to 9543.3090; or . . . [p]ermits a subject who has been disqualified by the Commissioner to be in direct contact with persons served by the program."